

MINUTES  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

Wednesday, February 1, 2006

The Court convened at 9:00a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., Swager, J. and Margulies, J.; and P. Aguilar, Deputy Clerk.

- A109510      Unfair Fire Tax Committee  
                 v.  
                 City of Oakland  
                 Cause called and argued by Paul Kleven, counsel for appellant, and Mark Morodomi, counsel for respondent. Cause ordered submitted.
- A108327      People  
                 v.  
                 Lyle Lynn Cooper  
                 Cause called and argued by Steven Lubliner, counsel for appellant, and Kelly Croxton, counsel for respondent. Cause ordered submitted.
- A111083      Philip Anselmo  
                 v.  
                 Commonwealth Land Title Company  
                 Cause called. Cary Dictor appeared for respondent. On January 30, 2006, the court clerk made two unsuccessful attempts to contact appellant Philip Anselmo by telephone to advise him of telephone procedures for oral argument. On February 1, 2006 at approximately 8:20a.m., the clerk made another unsuccessful attempt to contact appellant by telephone. A final attempt was made to contact appellant by telephone during the oral argument session. No previous request to continue oral argument was made by appellant. Cause ordered submitted.
- A109488      Richard Aaron et al.  
                 v.  
                 Dallas Dunham et al.  
                 Cause called and argued by Stephen Watson, counsel for appellants, and William Needham, counsel for respondents argued by telephone. Cause ordered submitted.

A109971 Rick Payne  
A110630 v.  
Joe Bob Schmidt  
Cause called and argued by Charles Kinney, counsel for appellant, and  
Gary Redenbacher, counsel for respondent. Cause ordered submitted.

A108220 Jon H. Delp  
v.  
Dwight E. Mullins et al.  
Cause called and argued by Anne Hipshman, counsel for appellant, and Jay  
Putnam, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 a.m.

California Court of Appeal  
First Appellate District  
Division One

Wednesday, February 1, 2006

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Swager, J. Margulies, J., and P. Aguilar, Deputy Clerk.

A109704      People  
                 v.  
                 Robert P.  
Cause called and argued by Rita Swenor, counsel for appellant, and Michael Banister, counsel for respondent. Cause ordered submitted.

A109338      Michael Liranzo  
                 v.  
                 Randall Liranzo et al.  
Cause called and argued by Steven McCarthy, counsel for appellant, and J.L. Dobson and Paul Sheng, counsel for respondents. Cause ordered submitted.

Court adjourned.

There were no cases scheduled for oral argument on February 2, 2006.

Thursday, February 2, 2006

Division One

**A108711 – Joseph Rumie v. Soledad Martinus et al.**

The judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication)

**A109057 – In re Microsoft I – V Cases. Microsoft Corporation v. Charles Q. Jakob.**

By the Court: The petition for rehearing is denied. Marchiano, P.J.

Thursday, February 2, 2006 (continued)

Division Two

**A110250 – In re Luis Z., a Person Coming Under the Juvenile Court Law. The People v. Luis Z.**

The dispositional order is affirmed. Busch, J.\* We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication)

**A107069 – The People v. Allegheny Casualty Company.**

By the Court: The opinion in the above-entitled matter filed on January 19, 2006, was not certified for publication in the Official Reports. It now appears that the opinion should be published in the Official Reports and it is so ordered. Kline, P.J. (Certified for Publication)

**A107227 – The City and County of San Francisco et al., v. Thomas O. Ballard.**

**A108569 – Thomas O. Ballard v. The City and County of San Francisco, et al.**

By the Court: The opinion in the above-entitled matter filed on January 10, 2006, was not certified for publication in the Official Reports. It now appears that the opinion should be published in the Official Reports and it is so ordered. Kline, P.J. (Certified for Publication)

**A111489 – The People v. Christian Van Reeth.**

Accordingly, the judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Busch, J.\* (Not for Publication)

**A107567 – The People v. Shunn Duwayne Oliver.**

The judgment of conviction is affirmed. Busch, J.\* We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication)

Division Three

**A110897 – The People v. David Tony Barrow.**

The order revoking probation and the judgment entered on June 22, 2005 are reversed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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Friday, February 3, 2006

Division One

**A110585 – Francis David Ryan v. Gunther Dertz.**

The Court: The petition for rehearing is denied. The notice that the cause was submitted pursuant to California Rules of Court, rule 23(d)(1), was issued due to clerical error and is hereby rescinded. The appeal has been dismissed, and there was no cause to submit. Stein, Acting P.J.

Division Two

**A108043 – The People v. Raquel Chavez.**

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J.\*  
(Not for Publication)

Division Five

**A107346 – Clark Allen et al., v. Craig Walker et al.**

The appeal is dismissed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

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\* Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, February 6, 2006

Division One

**A101407 – Phil Linza v. The Diamond Center, Inc., et al.**

**A101408 – Phil Linza v. Paul Copansky et al.**

The Court: The petition to publish the opinion in this matter is denied. Marchiano, P.J.

Monday, February 6, 2006 (continued)

Division Two

**A109375 – In re Stephanie S., a Person Coming Under the Juvenile Court Law. The People v. Stephanie S.**

We affirm the dispositional order and remand for the juvenile court to exercise its discretion in determining the appropriate maximum period of confinement in CYA. Lambden, J. We Concur: Kline, P.J., Ruvolo, J.\* (Not for Publication)

**A108340 – The People v. David Hunter.**

Appellant's conviction under section 12021, subdivision (a)(1), for possession of a firearm by a felon is reversed. Therefore, the trial court is directed to vacate the verdict with respect to the charge of possession of a firearm by a felon in the amended information in Case No. CH34399A, and to prepare and forward to the Department of Corrections an amended abstract of judgment. In all other respects the judgment is affirmed. Ruvolo, J.\* We Concur: Kline, P.J., Haerle, J. (Not for Publication)

**A108408 – The People v. Mayweather Marshall.**

We affirm appellant's conviction. Ruvolo, J.\* We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication)

**A107461 – Daniel Lyons v. Chinese Hospital Association et al.**

The order denying attorney fees to Lyons is reversed, and the cause remanded to the trial court to make an award of attorney fees and costs consistent with the views set forth in this opinion. Lyons is awarded his attorney fees and costs on this appeal. On remand, the trial court is directed to determine attorney fees in connection with this appeal. Kline, P.J. We Concur: Lambden, J., Ruvolo, J.\* (Not for Publication)

**A108580 – The People v. Erasmo Rosas Ruelas.**

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Busch, J.\* (Not for Publication)

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Monday, February 6, 2006 (continued)

Division Four

**A108733 – The People v. Jason Lamont Crosby.**

The judgment is affirmed. Sepulveda, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication)

Tuesday, February 7, 2006

Division One

**A110023 – James Rodgers v. Sargent Controls & Aerospace.**

Order Modifying Opinion and no change in judgment. The Court: It is ordered that the opinion filed herein on January 30, 2006, be modified in the following particulars: (See Order) There is no change in the judgment. Marchiano, P.J. (Certified for Publication)

Division Three

**A109948 – Mary E. Crighton Delaura, as Trustee, etc. v. James Beckett.**

The judgment is affirmed. The parties shall bear their respective costs on appeal. Pollak, J. We Concur: Parrilli, Acting P.J., Siggins, J. (Not for Publication)

Division Four

**A109136 – Phillip E. Anselmo v. Luther Burbank Savings et al.**

The judgments are affirmed in their entirety. Reardon, J. We concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication)

Division Five

**A107037 – The People v. Ronnie Gile Marinda.**

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

Wednesday, February 8, 2006

Division One

**A108922 – Deltakeeper, et al., v. California Department of Pesticide Regulation, et al.; Dow Agrosiences, R.P.I.**

The Court: The petition for rehearing is denied. Marchiano, P.J.

Division Two

**A108725 – Benicia Harbor Corporation v. City of Benicia and City Council and City of Benicia.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J.\* (Not for Publication)

**A108712 – Tutor-Saliba Corporation v. Dennis J. Herrera.**

Order for Publication. The Court: The written opinion, which was filed on January 10, 2006, has now been certified for publication pursuant to rule 976(b) of the California Rules of Court, and it is ordered published in the official reports. Ruvolo, Acting P.J.\* (Certified for Publication)

Division Three

**A110475 – The People v. Johnny Lee Adger.**

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

**A110081 – The People v. Leland Ray Carr.**

The judgment is affirmed. Pollak, J. We Concur: Parrilli, Acting P.J., Siggins, J. (Not for Publication)

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\* Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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Wednesday, February 8, 2006 (continued)

Division Four

**A112294 – S.T. v. The Superior Court of Contra Costa County; Contra Costa County Children and Family Services Bureau, R.P.I.**

The petition for extraordinary writ is denied on the merits. (§ 366.26, subd.(1)(1)(C); Cal. Rules of Court, rule 38.1(h)(1).) Our decision is final immediately. (Cal. Rules of Court, rule 24(b)(3).) Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication)

Wednesday, February 8, 2006 (continued)

Division Five

**A109479 – In re Vanessa M., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Franklin M.**

We reverse. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication)

**A108880 – In re Angelina R., a Person Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. Dina S.**

The order is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

**A110289 – In re Jerry W., Jr., a Person Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services v. Jerry W., Sr.**

The order is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication)

Thursday, February 9, 2006

Division One

**A109600 – In re Christopher T., a Person Coming Under the Juvenile Court Law. The People v. Christopher T.**

By the Court: The petition for rehearing is granted. Marchiano, P.J.

Division Two

**A107113 – The People v. John Anthony Duke.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

**A111113 – In re Sean W., a Person Coming Under the Juvenile Court Law. The People v. Sean W.**

Because our independent review of the record reveals that the trial court committed no error requiring reversal of the judgment, the judgment as modified by us is affirmed. Kline, P.J. We Concur: Lambden, J., Busch, J.\* (Not for Publication)

Division Three

**A111820 – Tron Bykle et al., v. Rondal Snodgrass et al.**

**A111996 – Tron Bykle et al., v. The Superior Court of Mendocino County; Rondal Snodgrass et al., R.P.I.**

Order to Show Cause and Order of Consolidation. Respondent superior court is ordered to show cause when the matter is ordered on calendar why a writ of mandate should not issue directing the superior court to set aside its November 2, 2005 order granting real parties' motion to expunge the notice of pendency of action (lis pendens) filed by petitioners. On the court's own motion, the petition for a writ of mandate in *Bykle v. Superior Court (Snodgrass)*, A111996, is consolidated with the appeal in *Bykle v. Snodgrass*, A11820. All further submissions to this court relating to the petition, the appeal, or both should bear the consolidated case caption. This order to show cause is to be served and filed on or before February 9, 2006. It shall be deemed served upon mailing by the clerk of this court of certified copies of this order to all parties to this proceeding and to respondent superior court. Marchiano, P.J.

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, February 8, 2006

Court convened at 9:00a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Parrilli, J., and Siggins, J.; and B. Robbins, Deputy Clerk.

- A108262      The People  
                 v.  
                 Kenneth Douglas Vance,  
Cause called and argued by Douglass C. MacMaster, counsel for appellant,  
and Oscar Bobrow, counsel for respondent. Cause ordered submitted.
- A110421      In re Dylan B., et al., Persons Coming Under the Juvenile Court Law  
                 Social Services Agency,  
                 v.  
                 Theresa K.  
Cause called and argued by Robert A. Devine, counsel for appellant, via  
Teleconference, and Marke Estis, counsel for respondent, via teleconference.  
Cause ordered submitted.

At this point in the proceedings, Justice Pollak joined the bench. Justice Parrilli did not participate in argument of the next case, but remained in the courtroom.

- A109555      In re the Marriage of Dawn and Shawn Quinlivan  
                 Shawn P. Quinlivan,  
                 v.  
                 Dawn V. Quinlivan.  
Cause called and argued by Shawn P. Quinlivan, appellant in pro per, and  
Scott W. Lueders, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Presiding Justice McGuiness left the bench. Justice Parrilli presided over the rest of the morning calendar.

A108245      John F. Hernandez, et al.,  
v.  
Whitman Corporation, et al.  
Cause called and argued by William Simpich, counsel for appellants, and  
Richard W. Raushenbush, counsel for respondent Whitman Corporation, and  
Frank E. Zotter, counsel for County of Mendocino, via teleconference. Cause  
ordered submitted.

Court adjourned.

Thursday, February 9, 2006 (continued)

Division Four

**A110197 – In re Deanna L. et al., Persons Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. Diana L.**

The orders terminating parental rights are affirmed. Ruvolo, J. We Concur: Reardon, J., Rivera, J. (Not for Publication)

Division Five

**A110413 – In re Ruby B., a Person Coming Under the Juvenile Court Law. Lake County Department of Social Services v. Maria B.**

The order is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)



Friday, February 10, 2006

Division Two

**A111160 – In re Brent L., a Person Coming Under the Juvenile Court Law. The People v. Brent L.**

The matter is remanded to the juvenile court with directions to exercise its discretion in setting appellant's maximum term of confinement, pursuant to section 731, subdivision (b). The record is ordered corrected to reflect the appellant earned 392 days of custody credit as of July 12, 2005. The court's order is otherwise affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication)

Division Three

**A108262 – The People v. Kenneth Douglas Vance.**

The order dismissing the information is reversed. Parrilli, J. We Concur: McGuinness, P.J., Siggins, J. (Not for Publication)

Division Five

**A108597 – Belgheis Sahbari v. Silicon Valley Chemlabs, Inc., et al.**

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication)

Tuesday, February 14, 2006

Division Two

**A109898 – Argonaut Insurance Company v. Equitas Reinsurance Limited, et al.**

By the Court\*: The purported appeals are dismissed. \*Kline, P.J., Haerle, J., Busch, J.  
[assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.]  
(Not for Publication.)

**A108526 – The People v. Jorge S. Vega.**

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J.\* (Not for Publication)

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\* Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Tuesday, February 14, 2006

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Lambden, J., Officer Scrivner and S. Wheeler, Deputy Clerk.

- A108419      United States Fire Insurance Company,  
                         v.  
                         Button Transportation, Inc.  
Cause called and argued by Susan Field, counsel for appellant, and Jeff Fackler, counsel for respondent. Cause ordered submitted.
- A108221      Karen Purvis,  
                         v.  
                         Wells Fargo & Company, et al.  
Cause called and argued by Andrew F. Pierce, counsel for appellant, and Theodora Rochelle Lee, counsel for respondents. Cause ordered submitted.
- At this point of the proceedings, J. Lambden left the bench and P.J. Ruvolo\* joins the bench for the remainder of the calendar.
- \*Presiding Justice of Division Four sitting under assignment by the Chief Justice.
- A106797      The People,  
                         v.  
                         Aldo Romero  
Cause called and argued by James Kyle Gee, counsel for appellant, and Allen R. Crown, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A108235      In re the Marriage of Irwin and Julie Pearlstein,  
                         Irwin R. Pearlstein,  
                         v.

Julie Pearlstein.

Cause called and argued by Garrett Clark Dailey, counsel for appellant, and Bernard Walt and via teleconference, Mary Dahlberg, Deputy Attorney General, counsel for respondents. Cause ordered submitted.

At this point of the proceedings, J. Haerle left the bench and J. Lambden Joins the bench for the remainder of the calendar.

A109181 The People,

v.

Christopher Kyle Prater.

Cause called and argued by Barry Martin Karl, counsel for appellant, and Kelly Croxton, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P.J., Lambden, J., Ruvolo, P.J.\*, Officer Umeki and S. Wheeler, Deputy Clerk.

\* Presiding Justice of Division Four sitting under assignment by the Chief Justice.

A109258 Richard Armstrong,

v.

San Francisco Bay Area Rapid Transit District, et al.

Cause called and argued by Dennis Patrick Riordan, counsel for appellant, and Thomas Cull Lee, counsel for respondent. Cause ordered submitted.

A105757 The People,

v.

Marques Gomer.

Cause called and argued by Mark David Greenberg, counsel for appellant, and Amy Haddix, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court in recess until Wednesday, February 15, 2006 at 9:30 a.m.

Tuesday, February 14, 2006 (continued)

Division Three

**A108245 – John F. Hernandez, et al. v. Whitman Corporation, et al.**

The order of dismissal in the County's favor is affirmed. The judgment in favor of Whitman is reversed. On remand the court is directed to re-enter its order summarily adjudicating appellants' statutory claims, and to enter a new order denying summary adjudication as to the negligence and wrongful death causes of action. The order denying leave to amend is affirmed, without prejudice to appellants' right to seek leave to amend the complaint to state a cause of action in public nuisance. Each side shall bear its own costs. Parrilli, Acting P.J. We Concur: Pollak, J., Siggins, J. (Not for Publication)

Wednesday, February 15, 2006

Division One

**A106932 – Terence Bunton et al., v. Michael Barber.**

The trial court's ruling concerning the width of the easement is reversed, and the trial court is directed to enter a modified judgment (1) vacating paragraph Nos. 6, 7, and 8 of its statement of decision and (2) granting declaratory relief that quiets title in the Buntons to an easement for ingress and egress whose location and boundaries are those specified by the Buntons' expert witness, Phillip A. Danskin & Associates, in the survey submitted to the trial court as Exhibit I-6. In addition, the trial court's summary denial of injunctive relief against Mr. Barber is reversed, and the court is directed to enter a modified judgment granting permanent injunctive relief prohibiting Barber from: (1) trespassing onto 39 Bridge Road; (2) operating motor vehicles at full throttle or spinning the wheels of motor vehicles on or near 39 Bridge Road; (3) operating a motor vehicle at a distance less than 10 feet behind vehicles operated by either of the Buntons on Bacherlors Road; (4) installing speed bumps on Bachelors Road or otherwise interfering with the free and reasonable movement of vehicles on Bacherlors Road; (5) moving the Buntons' trash cans or otherwise interfering with solid waste collection from 39 Bridge Road; (6) damaging any of the levees on or adjacent to 15 Bridge Road and/or 39 Bridge Road or interfering in any way with the flap valve on the outer levee without prior permission from a court or administrative agency having jurisdiction over the levee; (7) damaging or removing any of the wooden lath surveying markers or other survey marker or monuments placed by the Buntons' surveyor to mark Bacherlors Road; (8) damaging any signpost lawfully erected by the Buntons to mark Bacherlors Road; and (9) interfering with the reasonable use, maintenance, or improvement of Bacherlors Road by the Buntons. Except as expressly noted in the foregoing paragraph, the trial court's judgment is affirmed. The parties shall bear their own costs on appeal.

Wednesday, February 15, 2006 (continued)

Division Two

**A101176 – The People v. Francois Poitier Givens.**

**A103979 – Francois Poitier Givens v. The Superior Court of San Francisco County; The People, R.P.I.**

**A107422 – In re Francois Poitier Givens, on Habeas Corpus.**

Order Modifying Opinion and Denying Request for Rehearing and no change in judgment. Good cause appearing, it is hereby ordered that the opinion filed herein on January 26, 2006, is modified as follows: (See Order) Appellant's petition for rehearing is denied. Kline, P.J. (Not for Publication)

**A109706 – Chicago Title Insurance Company v. Gerard A. De Biasi, Jr.**

Judgment is affirmed. Chicago Title is to pay the costs on appeal. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

**A106638 – John Garamendi, as Insurance Commissioner, etc. v. Golden Eagle Insurance Company; KRC-HLT Corporation.**

The judgment is reversed insofar as it orders Golden Eagle to indemnify Formost. In all other respects, the judgment is affirmed. Respondent's Appendix is stricken. Golden Eagle's motion for sanctions is denied. Each party shall bear its own costs in connection with this appeal. Kline, P.J. We Concur: Lambden, J., Ruvolo, J.\* (Not for Publication)

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\* Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Wednesday, February 15, 2006

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Kline, P.J., Lambden, J., Busch, J.\*, Officer Chambers, and I. Santos, Deputy Clerk.

A108911      \*Busch, J. (San Francisco Superior Court Judge, assigned by the Chief Justice pursuant to article VI, section 6 the California Constitution.)  
Paul Andrews et al.,  
v.  
Foster Wheeler.  
Cause called and argued by David Collins, counsel for appellants, and David Rice, counsel for respondent. Cause argued and submitted.

At this point of the proceedings, Justice Lambden and Justice Busch left the bench and P.J. Ruvolo\* and Justice Haerle joined the bench for the remainder of the calendar.

A110435      \*Ruvolo, P.J. (Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)  
Wendy Farnsworth,  
v.  
John Tint et al.  
Cause called and argued by Alvin Potter, counsel for appellant, and Jeanette Little, counsel for respondents. Cause ordered submitted.

**COURT ADJOURNED.**



Wednesday, February 15, 2006 (continued)

Division Three

**A111020 – The People v. David A. Hutchings.**

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication)

**A107040 – The People v. Bruce Allen Fugate.**

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication)

**A108203 – The People v. Orlando Deponte Melin.**

The convictions are affirmed. The sentences and victim restitution award of \$1,040, are vacated, and the matter is remanded for resentencing and redetermination of the victim restitution award. Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication)

**A106187 – Ed Cochran et al., v. Fairbanks Enterprises, Inc., et al.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication)

**A109735 and A111434 – In re Athena H., et al., Persons Coming Under the Juvenile Court Law. Lake County Department of Social Services v. Jessica H.**

By the Court: The motion to consolidate appeals filed by appellants Cynthia and Larry H. is granted for purposes of oral argument, if any, and decision. Respondent's brief in A109735 remains due March 9, 2006, and respondent's brief in A111434 remains due March 13, 2006. Respondent may apply to this court to file a consolidated brief. Appellants Cynthia and Larry H. may file a consolidated reply brief, if any. McGuiness, P.J.

Thursday, February 16, 2006

Division Two

**A105203 – The People v. Richard Juniel, Jr., et al.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J.\* (Not for Publication)

Division Three

**A110421 – In re Dylan B. et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services v. Theresa K.**

The orders are affirmed. Siggins, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

**A109555 – In re the Marriage of Shawn P. and Dawn V. Quinlivan. Shawn P. Quinlivan v. Dawn V. Quinlivan.**

The order is affirmed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication)

**A112356 – Victor M. v. The Superior Court of Alameda County; Alameda County Social Services Agency, R.P.I.**

The petition is denied on the merits. (§ 366.26, subd. (l)(1)(C); Cal. Rules of Court, rules 38.1(i)(1); *In re Julie S.* (1996) 48 Cal.App.4<sup>th</sup> 988, 990-991.) Our decision is final immediately. (Cal. Rules of Court, rule 24(b)(3).) This court's stay of the section 366.26 hearing shall be dissolved upon the filing of this opinion. McGuiness, P.J. We Concur: Parrilli, J., Siggins, J. (Not for Publication)

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\* Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, February 17, 2006

Division One

**A109704 – In re Robert P., a Person Coming Under the Juvenile Court Law. The People v. Robert P.**

The matter is remanded to the juvenile court with directions to exercise its discretion in setting defendant's maximum term under section 731 (b). The CYA commitment is otherwise affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

Division Two

**A106356 – Carole Marasovic, Individually and as Administratrix, etc. v. Laura Eberhard.**

The judgment in favor of respondent Eberhard is affirmed. Respondent is awarded her costs on appeal. Ruvolo, J.\* We Concur: Kline, P.J., Lambden, J. (Not for Publication)

**A106355 – Carole Marasovic, Individually and as Administratrix, etc. v. Alta Bates Medical Center et al.**

The judgment in favor of respondents Alta Bates and Bradford is affirmed. Respondents are awarded their costs on appeal. Ruvolo, J.\* We Concur: Kline, P.J., Lambden, J. (Not for Publication)

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\* Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, February 21, 2006

Division One

**A108881 – The People v. Paul Mitchell.**

Order Modifying Opinion and Denying Rehearing and no change in judgment. The Court: It is ordered that the opinion filed herein on January 24, 2006, be modified in the following particulars: (See Order) There is no change in the judgment. The petition for rehearing is denied. Stein, Acting P.J. (Not for Publication)

**A110496 – In re Justin F., a Person Coming Under the Juvenile Court Law. Lake County Department of Social Services v. Charline P.**

The juvenile court's order following the section 366.26 hearing and its denial of the section 388 petition are vacated. The matter is remanded to the juvenile court for rehearing of the section 388 petition and a new selection and implementation hearing pursuant to section 366.26, if such a hearing is necessary. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication)

**A108711 – Joseph Rumie v. Soledad Martinus et al.**

Order Modifying Opinion and Denying Rehearing and no change in judgment. The Court: It is ordered that the opinion filed herein on February 2, 2006, be modified in the following particulars: (See Order) There is no change in the judgment. The petition for rehearing is denied. Stein, Acting P.J. (Not for Publication)

**A108711 – Joseph Rumie v. Soledad Martinus et al.**

Order Denying Request for Publication. The Court: The request for publication is denied. Stein, Acting P.J.

Tuesday, February 21, 2006 (continued)

Division Two

**A106927 – The People v. Andrew Videau.**

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J.\* (Not for Publication)

**A110754 – In re Oscar O., a Person Coming Under the Juvenile Court Law. The People v. Oscar O.**

The order of commitment is affirmed. Busch, J.\* We Concur: Kline, P.J., Haerle, J. (Not for Publication)

**A112339 – In re S.T., et al., Persons Coming Under the Juvenile Court Law. Edward M. v. Superior Court of Alameda County; Alameda County Social Services Agency.**

The petition for extraordinary relief is denied on the merits. The request for a stay of the section 366.26 hearing is denied. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 24(b)(3).) Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

Division Four

**A110571 – Jackie Pieri et al., v. City and County of San Francisco et al.**

The judgment is reversed. Rivera, J. We Concur: Sepulveda, Acting P.J., Munter, J.\* (Not for Publication)

**A109118 – Robert Williams v. Robert Griggs Schock et al.**

The judgment is affirmed. Ruvolo, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication)

**A111111 – In re Joshua H., a Person Coming Under the Juvenile Court Law. The People v. Joshua H.**

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\* Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The order of restitution is vacated. This matter is remanded back to the trial court for further proceedings consistent with this opinion. Ruvolo, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

Tuesday, February 21, 2006

The Court convened at 9:30a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Rivera, J.; Ines Calanoc, Deputy Clerk; CHP Officer Vincent Chambers, Bailiff.

A107794      The People  
                 v.  
                 Kendra Dawn Bernard  
Cause called. Victor Morse argued for appellant Bernard. Allan Yonnow argued for respondent. Cause submitted. Reardon, J. left the bench after this case.

At this point, the Court reconstituted itself to include: Ruvolo, P.J., Sepulveda, J. And River, J.

A109845      The People  
                 v.  
                 Jerry M.  
Cause called. Alan Dell'Ario argued for appellant Jerry M. Martin Kaye argued for respondent. Cause submitted.

A107853      The People  
                 v.  
                 William Richard Danser  
Cause called. Arthur Dudley argued for appellant William Danser. Bridget Billeter argued for respondent. Cause submitted.

Court recessed until 1:30 p.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

Tuesday, February 21, 2006

The Court reconvened at 1:30p.m. in its courtroom at 350 McAllister Street, 4<sup>th</sup> Floor, San Francisco. Present: Reardon, Acting P.J., Sepulveda, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Aron Ching, Bailiff.

- A101719 Anna Kieturakis  
A104661 v.  
Macie J. Kieturakis  
Cause called. Vivian Kral argued for appellant/cross-respondent Anna Kieturakis. Bernard Wolf argued for respondent/cross-appellant. Causes submitted.
- A109491 Carol Gilbert, Inc.  
v.  
Ruby's Restaurant Group  
Cause called. Scott A. Sommer argued for appellant Ruby's. David Tillotson and John Lofton argued for respondent. Cause submitted.
- A108806 California Association of Sanitation Agencies  
v.  
State Water Resources Control  
California Coastkeeper Alliance  
Cause called. Daniel Cooper argued for appellants California Coastkeeper et al. Chris Scheuring and Peter McGaw argued for respondents. Cause submitted.
- A108301 Frances Boyle et al.  
v.  
Certainteed Corporation  
Cause called. Bryce C. Anderson argued for appellants Boyle et al. Camille Fong argued for respondents. Cause submitted.

The Court adjourned at 3:34p.m.

Tuesday, February 21, 2006 (continued)

Division Five

**A108662 – In re the Marriage of Gerald Taber and Emiliana Taber. Gerald Taber v. Emiliana Taber.**

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)



Wednesday, February 22, 2006

Division One

**A109971 and A110630 – Ricky Payne v. Joe Bob Schmidt et al.**

The orders are affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

**A108368 – Gwendolyn R. Sykes v. Douglas Sykes.**

By the Court: The petition for rehearing is denied. Marchiano, P.J.

**A108246 and A109226 – Allen Harman v. City and County of San Francisco et al.**

The judgment for damages is affirmed. The award of attorney fees is vacated and the case remanded for further proceedings consistent with this opinion. Each party shall bear its own costs on appeal. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Certified for Publication)

**A109600 – In re Christopher T., a Person Coming Under the Juvenile Court Law. The People v. Christopher T.**

The order of commitment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

**A111083 – Phillip Anselmo et al., v. Commonwealth Land Title Company.**

The appeal from the judgment of dismissal entered February 2, 2005, is dismissed as untimely filed. The order of June 23, 2005, is affirmed. Respondents are awarded costs. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication)

**A108220 – Jon Delp v. Dwight Mullins et al.**

The judgment is reversed to the extent that it dismisses appellant's claim for compensation during "main" on-call shifts and is remanded for further proceedings consistent with this opinion. In other respects, the judgment is affirmed. Each party shall bear its own costs on appeal. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication)

Wednesday, February 22, 2006 (continued)

Division Two

**A110600 – The People v. Armando Morales.**

**A112406 – In re Armando Morales, on Habeas Corpus.**

The judgment and sentence imposed are affirmed. Kline, P.J. We Concur: Lambden, J., Busch, J.\* (Not for Publication)

**A109832 – In re Byron W., a Person Coming Under the Juvenile Court Law. The People v. Byron W.**

The order of commitment is affirmed. Busch, J.\* We Concur: Kline, P.J., Haerle, J. (Not for Publication)

Division Three

**A108968 – James Duffy v. City and County of San Francisco et al.**

The Court: The petition for rehearing is denied. McGuinness, P.J.

**A109948 – Mary E. Crighton Delaura, as Trustee, etc. v. James Beckett.**

The Court: The petition for rehearing is denied. McGuinness, P.J.

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, February 22, 2006

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Parrilli, J., and Siggins, J.; and J. Alameda, Deputy Clerk.

- A110320 Hassan Mohammad Hamdi,  
v.  
Omar Mohammad Hamdi Al-Zghoul, et al.  
Cause called and argued by Razi Abbas Shah, counsel for appellant, and Michael T. Stone, counsel for respondents. Cause ordered submitted.
- A105640 Kathryn Mattin,  
A106908 v.  
Davies Medical Center, et al.  
Cause called and argued by Douglas C. Fladseth, counsel for appellant, and Lawrence Arthur Bennett and Edward Seidel, counsel for respondents. Cause ordered submitted.
- A108214 Consulting Group International, LLC,  
v.  
Linda C. Cavalli, et al.  
Cause called and argued by Bruce Pelkey, counsel for appellant, Keith Jeffrey Hollis, counsel for appellant, via teleconference, and Paul Loomis, counsel for Respondents. Cause ordered submitted.
- A108537 In re Brittany K., et al., Persons Coming Under the Juvenile Court Law.  
Social Services Agency,  
v.  
Ellen J.  
Cause called and argued by Carole Speckels Greeley, counsel for appellant, and Bruce Goldstein, counsel for respondent, via teleconference. Cause ordered submitted.

At this point in the proceedings Justice Siggins left the bench. Presiding Justice McGuinness announced that the panel for the last case is comprised of Justice Parrilli, Justice Pollak, and himself; however, Justice Pollak is away and unavailable for oral argument, but will review the recording proceedings upon his return. The parties proceeded with oral argument.

A109060

Homes First,

v.

Gordon J. King.

Cause called and argued by Jannik Patrick Catalano, counsel for appellant, and Svetlana M. Rishina, counsel for respondent. Martin D. Goodman appeared for the respondent but did not argue. Cause ordered submitted.

Court adjourned.

Wednesday, February 22, 006 (continued)

Division Four

**A111240 – The People v. Roger Leonard Roth.**

Judgment affirmed. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication)

**A106758 – Thomas D. Abernathy v. County of Marin et al.**

The order granting a new trial on the first cause of action (negligence), fourth cause of action (elder abuse), and sixth cause of action (breach of fiduciary duty) is affirmed. The case is remanded to the trial court for proceedings consistent with the views expressed in this opinion. Plaintiff Abernathy shall recover his costs incurred on appeal upon timely application in the trial court. (Cal. Rules of Court, rule 27.) Sepulveda, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication)

**A111761 – In re D.P., a Person Coming Under the Juvenile Court Law. The People v. D.P.**

The orders declaring that the minor be continued as a ward of the court and imposing a 90-day juvenile hall commitment are affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication)

**A102559 – The People v. Ruben Eliceo Vasquez et al.**

By the Court: The petition for rehearing is denied. Ruvolo, P.J.

**A111115 – In re Damond A., a Person Coming Under the Juvenile Court Law. The People v. Damond A.**

The judgment is affirmed. Ruvolo, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication)

**A11239 – Christopher Alexander v. Maria Alexander.**

The appeal is dismissed. Ruvolo, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication)

Wednesday, February 22, 2006 (continued)

Division Five

**A108560 – Donald Ryan v. California Department of Motor Vehicles.**

The judgment is affirmed. The request for judicial notice is denied. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

**A104937 – The People v. Juan Maunel Andazola.**

The judgment is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication)

**A110388 – In re Noriya J., a Person Coming Under the Juvenile Court Law. San Francisco Department of Human Services v. Sandra B.**

The order is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

**A111632 – The People v. Bryon Palmer Wiesnoski.**

The judgment is affirmed. The matter is remanded to the trial court, with instructions to prepare a new abstract of judgment, showing that appellant was convicted of robbery, and to forward the corrected abstract of judgment to the Department of Corrections. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

## **MINUTES**

### **COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT DIVISION FIVE**

Wednesday, February 22, 2006

Court convened at 9:00 a.m. in The Acalanes High School Center for Performing Arts, at 1200 Pleasant Hill Road, Lafayette, California. Present: Jones, P.J., Simons, J.; Gemello, J., and Richard H. Sandvik, Deputy Clerk.

A109471     The People

v.

Ricky L. Williams

Cause called and argued by Katharine Demgen, counsel for appellant, and by Michael Banister, counsel for respondent. Cause ordered submitted.

A106121     Jane A. Graff

v.

Vallejo City Unified School District

Cause called and argued by Heather E. Borlase, counsel for appellant, and by Wendy Getty, counsel for respondent. Cause ordered submitted.

A108600     Jane A. Graff

v.

Vallejo City Unified School District

Cause called and argued by Heather E. Borlase, counsel for appellant, and by Wendy Getty, counsel for respondent. Cause ordered submitted.

Court adjourned at 10:15 a.m.

Thursday, February 23, 2006

Division One

**A111067 – The People v. Julian Wayne Martinez.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

Division Two

**A112053 – Patricia Levesque v. National Health Laboratories Incorporated, et al.**

The appeal (A112053) is hereby dismissed. Defendants are awarded their costs in connection with this appeal. Kline, P.J. We Concur: Lambden, J., Busch, J.\* (Not for Publication)

**A111397 – Kenneth Smith v. William Cox.**

The judgment is affirmed. As respondent did not respond or appear in this matter, no costs were incurred by him. Therefore, we make no award of costs on appeal. Kline, P.J. We Concur: Lambden, J., Busch, J.\* (Not for Publication)

Division Three

**A108851 – The People v. Jeffrey Ray Malone.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

**A106562 and A110234 – The People v. Paul Eddie Bland, II.**

By the Court: The petition for rehearing is denied. McGuiness, P.J.

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Thursday, February 23, 2006 (continued)

Division Four

**A111715 – In re the Marriage of Christian and Tammy J. Christian J. v. Tammy B.**

The family court's August 17, 2005 order denying modification of child visitation and the September 26, 2005 attorneys fees order are reversed. The case is remanded for a Family Code section 3118 evaluation and other proceedings consistent with the views expressed in this opinion. Mother shall recover costs incurred on appeal, upon timely application in the family court. (Cal. Rules of Court, rule 27.) Sepulveda, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication)

**A109161 – The People v. Alex Ivey.**

The judgment is reversed, and the matter is remanded with directions to conduct a new *Wheeler* hearing. If, after the hearing, the trial court denies the *Wheeler, supra*, 22 Cal.3d 258 motion, the judgment shall be reinstated. If however, the trial court grants the *Wheeler* motion, the defendant shall be given a new trial. (*People v. Tapia* (1994) 25 Cal.App.4<sup>th</sup> 984, 1032.) Sepulveda, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication)

Division Five

**A110471 – Teresa Breeden v. City of Oakland.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

Friday, February 24, 2006

Division One

**A109745 – The People v. Eli Aaron Polk.**

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J.  
(Not for Publication)

Division Two

**A108452 – The People v. Peter James Risk.**

The conviction for receiving stolen property is reversed and the abstract of judgment shall be modified to delete said conviction for petty theft. Lambden, J. We Concur: Kline, P.J., Busch, J.\* (Not for Publication)

**A107461 – Daniel Lyons v. Chinese Hospital Association et al.**

Order Certifying Opinion for Publication. The Court: The opinion in the above-entitled matter, filed on February 6, 2006, was not certified for publication in the Official Reports. For good cause, appellant's request for publication is granted. Pursuant to California Rules of Court, rules 976 and 976.1, the opinion in the above-entitled matter is ordered certified in the Official Reports. Kline, P.J. (Certified for Publication)

**A104637 – California Rifle and Pistol Association et al., v. City and County of San Francisco et al.**

The order appealed from is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvalo, J.\* (Not for Publication)

Division Three

**A109426 – The People v. Jose Pena-Hernandez.**

The appeal is dismissed as moot. Siggins, J. We Concur: McGuiness, P.J., Parrilli, J.  
(Not for Publication)

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, February 24, 2006 (continued)

Division Four

**A107794 – The People v. Kendra Dawn Bernard.**

The judgment is affirmed. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication)

Division Five

**A108270 – The People v. Charles Dupree White.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication)

**A108522 – The People v. Harold Earl Bisby.**

Order Modifying Opinion. The opinion filed on January 31, 2006, is modified as follows: (See Order) The preceding modifications do affect the judgment. The petition for rehearing is denied. Jones, P.J. (Not for Publication)

Monday, February 27, 2006

Division One

**A109510 – Unfair Fire Tax Committee v. City of Oakland.**

The judgment is reversed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Certified for Publication)

**A108308 – James Smith v. City and County of San Francisco et al.**

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication)

Division Two

**A110592 – In re Hunter A., a Person Coming Under the Juvenile Court Law. Sonoma County Human Services Department et al., v. William A.**

The order terminating parental rights is affirmed. William shall pay the Department's costs on appeal. Busch, J.\* We Concur: Kline, P.J., Haerle, J. (Not for Publication)

**A108133 – In re Andrew E., a Person Coming Under the Juvenile Court Law. The People v. Andrew E.**

The order committing appellant to the CYA is hereby vacated. The matter is again remanded to the juvenile court for the de novo hearing described in section 252. The Presiding Judge of the Alameda Superior Court is directed to assign this case to a judge other than Judge Smith. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication)

**A110436 – Andrew Smith v. 21<sup>st</sup> Century Insurance Company.**

The judgment is affirmed. In the interests of justice, each party is to bear its own costs on this appeal. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication)

Division Three

**A111066 – The People v. Ronald Emmitt Newhauser.**

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

The judgment is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Siggins, J. (Not for Publication)

Monday, February 27, 2006 (continued)

Division Four

**A110790 – Estate of Guido M. Barragan, Deceased. Bari Cuadra v. Constance Buchanan et al.**

The order is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication)

**A107485 – In re the Marriage of George A. and Cathy J. Heiner. George A. Heiner v. Cathy J. Chandler.**

The order is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Certified for Partial Publication)

**A107853 – The People v. William R. Danser.**

The judgment is affirmed. Sepulveda, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication)

**A110473 – The People v. William Robert Sea.**

The judgments are affirmed. Rivera, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication)

Monday, February 27, 2006 (continued)

Division Five

**A104559 – The People v. Eric Rogers et al.**

The judgments are affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

**A110494 – In re Joseph C., a Person Coming Under the Juvenile Court Law. The People v. Joseph C.**

The juvenile court order is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

**A111297 – CNA Casualty of California v. Workers' Compensation Appeals Board and David Kirkeby.**

The WCAB's decision is annulled. The case is remanded so the WCAB can conduct a new hearing to determine the amount of credit to which CNA is entitled. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication)

**A110418 – In re Christay'ah P. et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Department of Children and Family Services v. Christopher P. et al.**

As to Father, the order terminating parental rights is reversed and remanded with directions to hold another section 366.26 hearing after a showing of proper service of the hearing and of compliance with the Indian Child Welfare Act (ICWA) requirements. As to Mother, the order terminating parental rights is reversed and remanded with directions to order the Department to comply with all relevant ICWA notice requirements and related state law. Once the court determines there has been substantial compliance, it shall make a finding as to whether Christay'ah and Christopher are Indian children. (See Cal. Rules of Court, rule 1439(g)(5).) If, at any time, within 60 days after notice has been given there is a determinative response that Christay'ah and Christopher are or are not Indian children, the court shall find in accordance with that response. (Cal. Rules of Court, rule 1439(g)(1) & (4).) If there is no response, the court shall find that Christay'ah and Christopher are not Indian children, it shall reinstate the termination order as to Mother. If it finds they are Indian children, it shall set a new section 366.26 hearing and conduct all further proceedings in compliance with the ICWA and related federal and state law. (See *In re Jonathan S.* (2005) 129 Cal.App.4<sup>th</sup> 334, 342-343.) Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication)

Tuesday, February 28, 2006

Division One

**A109299 – The People v. Dexter Hayes.**

We dispose of this matter as follows. Any issue regarding Petition 1 is moot, because the two-year term that could have been imposed on that petition had now expired. (Cf. *People v. Cheek* (2001)25 Cal.4<sup>th</sup> 894, 897-898, 903 [SVP appeal moot where commitment term expired during pendency of appeal].) We affirm the recommitment on Petition 2 because of an absence of prejudicial error in the proceedings below. We modify the trial court's recommitment order to reflect a two-year recommitment term from November 16, 2004 to November 16, 2006. As modified, the recommitment order is affirmed. The SVP determination and resulting SVP recommitment are affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Certified for Publication)

**A110403 – The People v. Dmorris A. Hunter.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

Division Two

**A110372 – In re Raymond L., a Person Coming Under the Juvenile Court Law. The People v. Raymond L.**

The juvenile court's order is affirmed. Kline, P.J. We Concur: Haerle, J., Busch, J.\* (Not for Publication)

**A106606 and A107365 – Ohio Casualty Insurance Company et al., v. John Garamendi, as Insurance Commissioner of the State of California, et al.; The California Fair Plan Association, R.P.I.**

The judgment is affirmed in part and reversed in part. The matter is remanded to the superior court for recalculation of prejudgment interest at the rate of 7 percent, but otherwise is affirmed. Costs on appeal to respondents. Ruvolo, J.\* We Concur: Kline, P.J., Haerle, J. (Not for Publication)

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, February 28, 2006 (continued)

Division Three

**A109588 – The People v. Kevin Glenn Garner.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

**A110320 – Hassan Mohamed Hamdi v. Omar Mohammed Hamdi Alzghoul et al.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

**A108214 – Consulting Group International, LLC, et al., v. Linda C. Cavalli et al.**

The judgment is affirmed. The motion for sanctions is denied. Cavalli is awarded her costs on appeal. Siggins, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

**A105640 – Kathryn Mattin v. Davies Medical Center et al.**

**A106908 – Kathryn Mattin v. Jacob L. Mathis, Jr.**

The judgments are affirmed. Siggins, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

**A107991 – The People v. Edwin Murcia et al.**

The judgments are affirmed. Parrilli, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication)

**A108537 – In re Brittany K., et al., Persons Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. Ellen J.**

The order is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Siggins, J. (Not for Publication)

**A111383 – The People v. Nobel Williams.**

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

**A109810 – In re Rank M., a Person Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. Kelly F.**

The orders of the juvenile court are affirmed. Siggins, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)



Tuesday, February 28, 2006 (continued)

Division Four

**A106962 – The People v. Martin G. Pantoja.**

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J.  
(Not for Publication)

**A109475 – The People v. David Richard Raygoza.**

The employment requirement is stricken from the conditions of probation. The matter is reversed and remanded to the trial court for entry of a new order consistent with this opinion. In all other respects, the order is affirmed. Reardon, J. We Concur: Ruvolo, P.J., Sepulveda, J.  
(Not for Publication)

**A111355 – Scott Johnson et al., v. City and County of San Francisco et al.**

By the Court: The written opinion that was filed January 31, 2006, has now been certified for publication pursuant to rule 976(b) of the California Rules of Court, and it is ordered published in the Official Reports. Ruvolo, P.J. (Certified for Publication)

**A109903 – Michael Dixon v. William Wood.**

The judgment is affirmed. The clerk of the court is directed to forward a copy of this opinion, along with a copy of the appellate briefs, to the State Bar. Respondent is awarded costs on appeal. Rivera, J. We Concur: Reardon, Acting P.J., Munter, J.\* (Not for Publication)

**A110824 – In re Nicholas B., a Person Coming Under the Juvenile Court Law. The People v. Nicholas B.**

The dispositional order is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Sepulveda, J.  
(Not for Publication)

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tuesday, February 28, 2006 (continued)

Division Five

**A112407 – In re Thomas and Ashley W., Persons Coming Under the Juvenile Court Law. Ellen W. v. San Mateo Superior Court; San Mateo County Human Services Agency, R.P.I.**

**A112408 – Thomas W. v. San Mateo Superior Court; San Mateo Human Services Agency, R.P.I.**

The petitions are denied. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

**A107983 – The People v. Joshua Alan Combs.**

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication)

**A110455 – Robert Chow v. Communication Bridge Global Inc.**

The order denying CBG's motion is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication)